**YONG SHIN KAI**

**v.**

**PUBLIC PROSECUTOR**

HIGH COURT BORNEO, KUCHING
GEORGE SEAH J
[CRIMINAL APPEAL NO. KG 9 OF 1981]
7 NOVEMBER 1981

***CRIMINAL PROCEDURE:*** *Conviction under s. 30, Road Traffic Ordinance for riding a motor-cycle without due care and attention - Appeal against conviction - Burden of proof where onus of proof is cast upon prosecution - Whether trial Magistrate had misdirected herself.*

The appellant was found guilty and convicted of riding a motor-cycle without due care and attention under s. 30 of the Road Traffic Ordinance. He appealed against conviction.

On the morning of 18 September 1979, both the appellant, who was riding a motor-cycle and the complainant, who was driving a motor-car were travelling in the same direction along Main Bazaar, Kuching, towards Padungan. The road at that side of Main Bazaar consists of two lanes. Traffic on both lanes travel in the same direction.

The complainant's version of the accident was that as he approached Marine Department car park, he switched on the left-hand light signal, looked into the rear mirror of his car and seeing no traffic behind him, he turned into the car park. As he was doing so, the appellant came from behind and knocked into the left rear door of his car. He immediately stopped his car. When he alighted he saw the appellant and his motor-cycle lying on the left side of his car.

The appellant's version was that the complainant was driving his motor-car on the outer lane of Main Bazaar when he suddenly made a turn to his left, cutting into the path of the motor-cycle. The motor-cycle knocked into the motor-car. The appellant was thrown off his motor-cycle and sustained a fracture on his right leg.

In considering the two conflicting versions the trial Magistrate had held that she found as a fact that the version of the complainant (PW1) was the truthful one. On the law, she had stated "if, upon the whole of the evidence, there is any reasonable doubt as to whether the accused had committed the offence charged against him, he is entitled to be acquitted. This also means that, in order to be entitled to an acquittal, all that the defence need do is to raise a reasonable doubt as to the truth of the prosecution case." She had then held that on the evidence as a whole, the prosecution had proved beyond any reasonable doubt the offence charged against the accused and that the accused had not raised any reasonable doubt as to the truth of the prosecution case.

**Held:**

**[1]** The trial Magistrate had misdirected herself on the burden of proof which was on the prosecution to prove its case beyond reasonable doubt. The onus of proving guilt rested on the prosecution and there was no burden on the appellant to prove anything except to raise a reasonable doubt as to the truth of the prosecution case. In *Mohamed Yatim bin Abu Bakar v. Public Prosecutor* [1950] MLJ 57 at 59, Spenser-Wilkinson J said: "In this country, at the close of the case for the prosecution the court will not call upon the accused for his defence unless the evidence of the prosecution witnesses is, in the first instance, believed. If, when called upon for his defence the accused gives evidence, then the question

is, not which story is to be believed, but whether, even if the court is not inclined to accept all that the accused has said, his evidence does not raise a reasonable doubt as to the truth of the prosecution evidence or as to the accused's guilt." But it was plain that the trial Magistrate had approached the question of proof on the basis of resolving which of the conflicting versions she was to accept and in the end, she had preferred the version given by the complainant because she found the complainant to be an honest and impressive witness whereas the accused was a wholly unimpressive and unconvincing witness.

**[2]** Without seeing and hearing the witnesses the appellate court was unable to answer the question as to whether the dent and scratches on the doors were caused by the motor-cycle knocking into the side of the motor-car while it was in the process of making a left turn after having given proper light signal to do so. The proper course for the appellate Judge to adopt would be to allow the appeal and quash the conviction and sentence.

Re-trial of the appellant before another Magistrate of the First Class ordered.

**Case referred to:**
*Mohamed Yatim bin Abu Bakar v. Public Prosecutor [1950] MLJ 57*

**Legislation referred to:**
Road Traffic Ordinance 1958, s. 30

*For the appellant - Chan Khoon Ted standing in for Chan Kay Heng*
*For the respondent - DPP Abdul Rahman standing in for SFC Nik Hashim*

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Also found at [1982] CLJ 84

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